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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS,
B.V.

Plaintiff,

v.

GS MAGIC, INC.; GS MAGICSTOR,
INC.; and RIOSPRING, INC.

Defendants.

GS MAGIC, INC.; GS MAGICSTOR,
INC.; and RIOSPRING, INC.

Counterclaimants.

v.

HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS,
B.V.

CounterDefendant.

FILED
JUN 13 2005
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

CASE NO. CV-04-05460 JF

ELECTRONIC CASE FILING

RS
STIPULATED {PROPOSED}
PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential or proprietary technical, commercial, financial, scientific, business and/or trade-
 4 secret information for which special protection from public disclosure and from use for any
 5 purpose other than prosecuting this action would be warranted. Accordingly, the parties hereby
 6 stipulate to and petition the Court to enter the following Stipulated Protective Order ("Order").
 7 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
 8 responses to discovery and that the protection it affords extends only to the limited information or
 9 items that (a) may have the effect of causing harm to the competitive position of the person or
 10 legal entity from which the information was obtained, (b) would violate an obligation of
 11 confidentiality to a third party, including but not limited to a court, or (c) deemed by any party to
 12 be confidential information belonging to it pursuant to Rule 26(c) of the Federal Rules of Civil
 13 Procedure. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
 14 Protective Order creates no entitlement to file confidential information under seal; Civil L.R. 79-5
 15 sets forth the procedures that must be followed and reflects the standards that will be applied
 16 when a party seeks permission from the Court to file material under seal.

17 Pursuant to Patent L.R. 2.2, any documents produced by a Party prior to the entry of this
 18 Order shall be deemed to be governed by this Order.

20 2. DEFINITIONS

21 2.1 Action: the litigation captioned Hitachi Global Storage Technologies
 22 Netherlands B.V. v. GS Magic, Inc., GS Magicstor, Inc., and Riospring, Inc. Case No. CV-
 23 04-05460.

24 2.2 Party: any party to this Action, including all of its officers, directors,
 25 and employees.

26 2.3 Disclosure or Discovery Material: all items or information, regardless
 27 of the medium or manner generated, stored, or maintained (including, among other things,

testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.4 “Attorneys Eyes Only” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Fed. R. Civ. P. 26(c), that may have the effect of causing harm to the competitive position of the person or legal entity from which the information was obtained, or would violate an obligation of confidentiality to a third party, including but not limited to a court.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this Action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as "Attorneys Eyes Only."

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Attorneys Eyes Only.”

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this Action.

2.10 Expert: a person with specialized knowledge or experience in a matter, pertinent to the Action who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action and who is not currently an employee of a Party, or was not an employee of a Party within the last year or who was not within the last year an employee of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with this Action.

2.11 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or

1 demonstrations; organizing, storing, retrieving data in any form or medium, jury consulting,
2 etc.) and their employees and subcontractors.

3 3. SCOPE

4 The protections conferred by this Order cover not only Protected Material (as defined
5 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
6 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
7 counsel to or in court or in other settings that might reveal Protected Material.

8 4. DURATION

9 Even after the termination of this Action, the confidentiality obligations imposed by this
10 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
11 otherwise directs.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

15 Each Party or non-party that designates information or items for protection under this Order
16 must take care to limit any such designation to specific material that qualifies under the
17 appropriate standards. A Designating Party must take care to designate for protection only
18 those parts of material, documents, items, or oral or written communications that qualify - so
19 that other portions of the material, documents, items, or communications for which protection
20 is not warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that
22 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
23 unnecessarily encumber or retard the case development process, or to impose unnecessary
24 expenses and burdens on other parties), expose the Designating Party to sanctions.

25 If it comes to a Party's or a non-party's attention that information or items that it
26 designated for protection do not qualify for protection at all, that Party or non-party must
27 promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "ATTORNEYS EYES ONLY" at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify "ATTORNEYS EYES ONLY."

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "Attorneys Eyes Only." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the legend "ATTORNEYS EYES ONLY" at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, "ATTORNEYS EYES ONLY."

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the entire transcript of the testimony of that day shall be deemed to be "Attorneys Eyes Only" for a period of thirty (30) days, and thereafter shall be redesignated as public unless, within that time, the Party or non-party offering or sponsoring the testimony identify any portions of the testimony that qualify as "Attorneys Eyes Only" and must specify, for each portion, the legend "ATTORNEYS EYES ONLY." In the event of disagreement about the

1 confidential status of a deposition transcript, it shall continue to be treated as "Attorneys Eyes
 2 Only" until this Court rules otherwise.

3 Transcript pages containing Protected Material must be separately bound by the
 4 court reporter, who must affix to the top of each such page the legend "ATTORNEYS EYES
 5 ONLY," as instructed by the Party or nonparty offering or sponsoring the witness or presenting
 6 the testimony.

7 (c) for information produced in some form other than documentary,
 8 and for any other tangible items, that the Producing Party affix in a prominent place on the
 9 exterior of the container or containers in which the protected information or item is stored the
 10 legend "ATTORNEYS EYES ONLY." If only portions of the information or item warrant
 11 protection, the Producing Party, to the extent practicable, shall identify the protected portions
 12 using the legend "ATTORNEYS EYES ONLY."

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 14 failure to designate qualified information or items as "Attorneys Eyes Only" does not,
 15 standing alone, waive the Designating Party's right to secure protection under this Order for
 16 such material. The inadvertent failure to designate confidential information as "Attorneys
 17 Eyes Only" shall not operate as a waiver of the Designating Party's right to designate
 18 information or documents as "Attorneys Eyes Only" and the Designating Party shall promptly
 19 provide marked replacement documents or other information using the legend
 20 "ATTORNEYS EYES ONLY." The Party receiving the designated information shall certify
 21 in writing that the original documents or information not bearing the designation have been
 22 destroyed or return those documents or information within ten (10) court days after receipt of
 23 the designated documents or information. If the Producing Party inadvertently discloses
 24 information or material that is protected by the attorney-client privilege, the work-product
 25 doctrine, or any other applicable privilege, the Designating Party shall promptly, upon
 26 discovery of the disclosure, notify in writing the Parties of the inadvertent production and
 27 request that the item(s) to be returned. If that request is made, thereafter no party to this
 28 Action shall assert that the disclosure waived any privilege or immunity. It is further agreed

1 that any Party in receipt of such documents shall return or destroy the inadvertently produced
 2 item(s) and all copies and derivations within five (5) court days after being notified.

3 Thereafter the Producing Party shall certify in writing that the inadvertently produced
 4 documents or other materials were destroyed or that they have all been returned. Such
 5 inadvertently produced documents shall not be used for any purpose in this Action.

6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7.1 **Timing of Challenges.** Unless a prompt challenge to a Designating
 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
 unnecessary economic burdens, or a later significant disruption or delay of the Action, a Party
 does not waive its right to challenge a confidentiality designation by electing not to mount a
 challenge promptly after the original designation is disclosed.

7.2 **Meet and Confer.** A Party that elects to initiate a challenge to a
 Designating Party's confidentiality designation must do so in good faith and must begin the
 process by conferring directly (in voice to voice dialogue; other forms of communication are
 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
 must explain the basis for its belief that the confidentiality designation was not proper and
 must give the Designating Party an opportunity to review the designated material, to
 reconsider the circumstances, and, if no change in designation is offered, to explain the basis
 for the chosen designation. A challenging Party may proceed to the next stage of the
 challenge process only if it has engaged in this meet and confer process first.

7.3 **Judicial Intervention.** A Party that elects to press a challenge to a
 confidentiality designation after considering the justification offered by the Designating Party
 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local
 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the
 basis for the challenge. Each such motion must be accompanied by a competent declaration
 that affirms that the movant has complied with the meet and confer requirements imposed in
 the preceding paragraph and that sets forth with specificity the justification for the

1 confidentiality designation that was given by the Designating Party in the meet and confer
2 dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the Producing Party's
6 designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

8.1 Basic Principles. A Receiving Party may use Protected Material, the
9 information contained therein, and any summaries, copies, abstracts, or other documents
10 derived in whole or part from Protected Material only for the purpose of the prosecution,
11 defense, or settlement of this Action, including any appeals, and for no other purpose. The
12 Receiving Party shall not disclose any part of Protected Material to any other person or entity
13 except in conformance with the conditions described in this Order. When the Action has been
14 terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons authorized under
18 this Order.

19 The restrictions on the dissemination and use of Protected Material contained
20 herein do not apply to material that is publicly available, or becomes publicly available after
21 disclosure other than through an act or omission of the Receiving Party.

22.2 Restrictions of Disclosure of Information Designated "ATTORNEYS
23 EYES ONLY."

24 Unless otherwise ordered by the Court or permitted in writing by the Designating
25 Party, a Receiving Party may disclose any information or item designated "Attorneys Eyes Only"
26 only to:

27 (a) The Receiving Party's Outside Counsel of record in this Action, as
28 well as employees of said counsel to whom it is reasonably necessary to disclose the information
STIPULATED [PROPOSED] PROTECTIVE ORDER

1 or item for this Action and who have signed the "Agreement to Be Bound by Protective Order"
2 that is attached hereto as Exhibit A;

3 (b) Experts (as defined in this Order) (1) to whom disclosure is
4 reasonably necessary for this Action, (2) who have signed the "Agreement to Be Bound by
5 Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.3,
6 below, have been followed;

7 (c) the Court and its personnel;

8 (d) court reporters, their staffs, and Professional Vendors to whom
9 disclosure is reasonably necessary for this Action and who have signed the "Agreement to Be
10 Bound by Protective Order" (Exhibit A);

11 (e) during their depositions, (1) witnesses in the Action to whom
12 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
13 Protective Order" (Exhibit A); or (2) current employees of a Producing or Designating Party in
14 the Action to whom disclosure of that Producing or Designating Party's own information is
15 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
16 reveal Protected Material must be separately bound by the court reporter and may not be
17 disclosed to anyone except as permitted under this Stipulated Protective Order.

18 (f) the author of the document or the original source of the
19 information.

20 7.3 Procedures for Approving Disclosure of "ATTORNEYS EYES
21 ONLY" Information or Items to "Experts":

22 (a) Unless otherwise ordered by the Court or agreed in writing by the
23 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any
24 information or item that has been designated "Attorneys Eyes Only" and/or marked with the
25 legend "ATTORNEYS EYES ONLY" first must make a written request to the Designating Party
26 that (1) sets forth the full name of the Expert and the city and state of his or her primary
27 residence, (2) attaches a copy of the Expert's current resume, (3) identifies the Expert's current
28 employer(s), (4) identifies each person or entity from whom the Expert has received

1 compensation for work in his or her areas of expertise or to whom the Expert has provided
2 professional services at any time during the preceding five (5) years, unless the fact of the service
3 or relationship was itself confidential in which case a general description shall be provided
4 identifying the nature of the entity (e.g. government agency, manufacturer of HDDs) and the
5 nature of the service or work (e.g. engineering design, technical consulting) and (5) identifies (by
6 name and number of the case, filing date, and location of court) any litigation in connection with
7 which the Expert has provided any professional services during the preceding five (5) years,
8 including whether or not testimony was given in the litigation.

9 (b) A Party that makes a request and provides the information specified in the
10 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
11 within seven (7) court days of delivering the request, the Party receives a written objection from
12 the Designating Party. Any such objection must set forth in detail the grounds on which it is
13 based.

14 (c) A Party that receives a timely written objection must meet and confer with
15 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
16 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert
17 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
18 5, if applicable) seeking permission from the Court to do so. Any such motion must describe the
19 circumstances with specificity, set forth in detail the reasons for which the disclosure to the
20 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
21 suggest any additional means that might be used to reduce that risk. In addition, any such motion
22 must be accompanied by a competent declaration in which the movant describes the parties'
23 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
24 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to
25 approve the disclosure.

26 In any such proceeding the Party opposing disclosure to the Expert shall bear the
27 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
28 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

1 7.4 Each Party shall prepare and maintain a written list setting forth the
2 name of the person, his or her occupation, and business address, for each person described in
3 paragraphs 7.2 and 7.3, who reviews or is given access to Attorneys Eyes Only Information or
4 Items. Support staff, stenographic and clerical employees of retained consultants, vendors
5 and Experts, and mock jurors retained by jury consultants, need not be listed. For attorneys of
6 record and their staff and personnel, only the name of the law firm need be listed. This list, as
7 well as copies of any executed versions of Exhibit A maintained by counsel, shall be provided
8 to opposing counsel upon request and, thereafter, upon revision of such documents.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION.

11 If a Receiving Party is served with a subpoena or an order issued in other litigation that
12 would compel disclosure of any information or items designated in this Action as "ATTORNEYS
13 EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if
14 possible) immediately and in no event more than three (3) court days after receiving the subpoena
15 or order. Such notification must include a copy of the subpoena or court order.

16 The Receiving Party also must immediately inform in writing the Party who caused the
17 subpoena or order to issue in the other litigation that some or all the material covered by the
18 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
19 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
20 caused the subpoena or order to issue.

21 The purpose of imposing these duties is to alert the interested parties to the existence of
22 this Protective Order and to afford the Designating Party in this case an opportunity to try to
23 protect its confidentiality interests in the court from which the subpoena or order issued. The
24 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
25 confidential material – and nothing in these provisions should be construed as authorizing or
26 encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
7 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
8 Be Bound" that is attached hereto as Exhibit A.

9 10. FILING PROTECTED MATERIAL.

10 Without written permission from the Designating Party or a court order secured after
11 appropriate notice to all interested persons, a Party may not file in the public record in this Action
12 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
13 with Civil Local Rule 79-5.

14 11. FINAL DISPOSITION.

15 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
16 days after the final termination of this Action, each Receiving Party must return all Protected
17 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all
18 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
19 the Protected Material. With permission in writing from the Designating Party, the Receiving
20 Party may destroy some or all of the Protected Material instead of returning it. Whether the
21 Protected Material is returned or destroyed, the Receiving Party must submit a written
22 certification to the Producing Party (and, if not the same person or entity, to the Designating
23 Party) by the sixty (60) day deadline that identifies (by category, where appropriate) all the
24 Protected Material that was returned or destroyed and that affirms that the Receiving Party has
25 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
26 capturing any of the Protected Material. Notwithstanding this provision, Outside Counsel are
27 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
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1 correspondence or attorney work product, even if such materials contain Protected Material. Any
2 such archival copies that contain or constitute Protected Material remain subject to this Protective
3 Order as set forth in Section 4 (DURATION), above.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order no Party waives any right it otherwise would have to object to disclosing or
9 producing any information or item on any ground not addressed in this Stipulated Protective
10 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any
11 of the material covered by this Protective Order.

12 IT IS SO STIPULATED.

1 Dated: June 13, 2005

2 Respectfully submitted,

3 MCDERMOTT WILL & EMERY LLP

4 By: /s/ Daniel Alberti

5 Daniel E. Alberti (State Bar No. 68620)

6 Mark G. Davis (*Pro Hac Vice*)

7 Michael D. Switzer (*Pro Hac Vice*)

8 Attorneys for Plaintiff

9 **HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS
B.V.**

10 WILSON SONSINI GOODRICH & ROSATI
11 Professional Corporation

12 By: /s/ Lisa M. Byerly

13 Robert Feldman

14 Jennifer Ochs

15 Maura Rees

16 Lisa M. Byerly

17 Attorneys for Defendants and
18 Counterclaimants GS MAGIC, INC., GS
19 MAGICSTOR, INC., and RIOSPRING,
20 INC.

21 **ORDER**

22 IT IS SO ORDERED this 13³ day of June, 2005.

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The Honorable Richard Seeborg
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the
6 Northern District of California on [date] in the case of Hitachi Global Storage Technologies
7 Netherlands B.V. v. GS Magic, Inc., GS Magicstor, Inc., and Riospring, Inc. Case No. CV-04-
8 05460 JF. I agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order and I understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
11 manner any information or item that is subject to this Stipulated Protective Order to any person or
12 entity except in strict compliance with the provisions of this Order. I understand that I may use
13 Protected Material, the information contained therein, and any summaries, copies, abstracts, or
14 other documents derived in whole or part from Protected Material only for the purpose of the
15 prosecution, defense, or settlement of this Action, including any appeals, and for no other
16 purpose. I also agree that at the close of this Action, I will return all materials to the law firm
17 which provided the materials to me. I will not retain any copies.

18 I further agree to submit to the jurisdiction of the United States District Court for the
19 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
20 Order, even if such enforcement proceedings occur after termination of this Action.
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1 I hereby appoint _____ [print or type full name] of _____
2 [print or type full address and telephone number] as my California agent for service of process in
3 connection with this Action or any proceedings related to enforcement of this Stipulated
4 Protective Order.

5 Date: _____
6

7 City and State where sworn and signed: _____
8

9 Printed name: _____
10

11 [printed name]
12

13 Signature: _____
14

15 [signature]
16

17 MPK 92701-1.068041.0013
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